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FORT COLLINS MUNICIPAL COURT

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Civil Case No.: 2018-CIVIL-01

**Fort Collins Municipal Court,
Larimer County, Colorado**

Court Address: 215 N. Mason St., 1st floor
P.O. Box 580
Fort Collins, CO 80522

Court Phone: 970-221-6800

PLAINTIFFS: ERIC SUTHERLAND; and BRIAN DWYER

v.

DEFENDANTS: THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry

Intervenor: Next Chapter Properties, LLC, an Illinois limited liability company

ORDER AMENDING SCHEDULE FOR CERTIFICATION AND FILING OF RECORD AND FOR FILING OF BRIEFS

This matter is before the Court on the City Defendants' Motion for Clarification of the Court's Order of July 23, 2018 setting a schedule for certification of the record and for filing of briefs, entered with regard to Intervenor Next Chapter Properties, LLC motion to expedite the briefing schedule. In its July 23rd Order, the Court noted that its review pursuant to C.R.C.P. 106(a)(4) is not de novo but "shall be limited to a determination of whether the body [the Fort Collins City Council] has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body. . ." C.R.C.P. 106(a)(4)(I). The Court also noted that "to date, while all parties' pleadings have referred to 'the record' and to 'the transcript,' no such record or transcript of the proceedings before either the Planning and Zoning Board or the City Council concerning the Johnson Drive Apartments Project Development Plan, PDP #170034, has been certified or otherwise presented to the Court for its review." (The Court also hereby notes that even those portions of the record purportedly attached to Plaintiffs' Second Amended Complaint, including "the appeal", were not, in fact, attached, and have not been certified for the Court's review.)

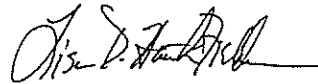
The City Defendants now take issue with the Court's Order that scheduled a simultaneous deadline for all parties to this action for certification of the record, asserting that such a simultaneous deadline shifts the burden of certification of, and payment for, the record, to Defendants. The Court's previous Order was issued pursuant to C.R.C.P. 106(a)(4)(VIII), which provides that "[t]he court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance." This certainly includes the schedule for certification of the record. In addition, the Court took into account the fact that Plaintiffs are pro se, and that the Intervenor's motion to expedite the briefing expressed an understandable urgency to get this matter resolved (although the Court notes that setting forth an expedited briefing schedule in proceedings dependent on the review of the record which makes no provision for the certification of the record is a bit disingenuous). All of that being said, the City Defendants' request to stagger the certification schedule is not unreasonable, although it will delay the proceedings further. The City Defendants' request to delay production of portions of the record while they are being prepared, however, is DENIED. This matter has been pending for several months, during which the City Defendants have been on notice that the record in this matter is at issue. In addition, the City Defendants' Answer to Plaintiffs' Second Amended Complaint refers repeatedly to "the appeal," to matters that were discussed before both the Board and City Council, and to the "hearing transcript," (See, e.g., Paragraphs 18, 19, and 22 of Defendants' Answer), which leads the Court to conclude that those items already exist and have been reviewed by counsel for the City Defendants. No additional time should therefore be necessary to prepare and certify those items of the record for the Court's review if, in fact, any party designates them for such review.

Therefore, pursuant to C.R.C.P. 106(a)(4)(VIII), the Court hereby ORDERS as follows:

- a. Plaintiffs shall certify and advance payment for or file with the Court and to all other parties those portions of the record concerning PDP#170034 that they wish the Court to review no later than Thursday, August 2, 2018;
- b. City Defendants and Intervenor Next Chapter Properties shall certify and file with the Court and to all other parties those additional portions of the record they wish the Court to review no later than Thursday, August 9, 2018.
- c. Plaintiffs' opening brief shall be filed no later than August 30, 2018;
- d. Response briefs shall be filed no later than September 20, 2018;

- e. Plaintiffs' reply brief shall be filed no later than October 4, 2018.

IT IS SO ORDERED, this 31st day of July, 2018.



Lisa D. Hamilton-Fieldman
Municipal Judge (Temporary)